

R E M A R K S

Attention is respectfully directed to the Amendment of Inventorship filed February 10, 2003, in the above-identified application. This Amendment was not acknowledged in the Office Action dated March 20, 2003.

Claim 1, on which all the other claims are dependent, has been amended to define further and more fully certain novel and distinguishing features of the invention. Since this amendment does not increase either the total number of claims or the number of independent claims, no additional fee is necessary.

Claims 1 (independent) and 2 - 10, 18 - 21, 29 and 30 (all dependent on 1) are in the application. Of these, claims 4 and 6 - 8 have been withdrawn from consideration pursuant to an election of species, and claims 1 - 3, 5, 9, 10, 18 - 21, 29 and 30 have been rejected as anticipated by or unpatentable over the cited art. No claim has been allowed.

In response to the rejection of claim 1 under 35 U.S.C. §102(b) as anticipated by each of Holloway and Aversa, the claim has been amended herein by the addition of the following recitals:

"said container unit having a long axis, and said well being shaped and positioned such that said applicator and said receptacle are disposed in tandem along said long axis when said applicator is stored in said well."

These added recitals are supported by the disclosure, in the original application, of the elected species of the claimed invention, i.e., Species II (FIGS. 9-11), which is described in the specification at p. 13, line 27, to p. 15, line 6. Stated with reference to FIG. 10, the container unit has a long axis (i.e., the geometric axis of elongated cylindrical housing member 44), and the well 46 is so shaped and positioned that when the applicator (brush 41) is stored therein as shown in FIG. 10, the brush and the receptacle (tub 50) are disposed in tandem succession, one after the other, along that long axis.

Further, it will be noted that the claim as thus amended remains generic to the elected subspecies (I) of FIGS. 50A-50C.

Neither Holloway nor Aversa is seen to disclose any device in which the applicator and the receptacle are disposed in tandem along the long axis of the container. In Holloway, the applicator 42 and receptacle 22 are disposed side by side, parallel to each other and to the long axis of the container, when the applicator is stored in the well or storage compartment 24 (see FIG. 2 of the patent). In Aversa, likewise, the applicator (brush 14) and the receptacle (recess 10 with tray 11) are disposed side by side, parallel to each other and to the long axis of the container structure (holder 8), when the applicator is stored in the well or recess 13 (see FIGS. 3-8 of the patent).

The tandem arrangement defined in applicant's amended claim 1 affords significant practical advantages over a side-by-side arrangement of applicator and receptacle, because it enables the overall dispenser to be slender (small in cross-sectional dimensions) as is commonly desired for a cosmetic device to be carried in a user's purse, and at the same time enables the cross-sectional dimensions of the receptacle to be large in relation to the cross-sectional dimensions of the device as a whole, hence maximizing the volume of cosmetic material that can be contained in a dispenser of given cross-section. In contrast, the device of Holloway is relatively chunky (large in cross-sectional diameter), while that of Aversa is constrained to have a "rather shallow" tray (col. 2, line 8).

Clearly, claim 1 as herein amended is not anticipated by Holloway or Aversa, inasmuch as neither reference discloses the tandem structural arrangement of applicator and receptacle to which the amended claim is now limited. It is further submitted that amended claim 1 distinguishes patentably over each of Holloway and Aversa by virtue of the "tandem" recital, because there is nothing in either reference to suggest or make obvious such a modification of their disclosed structures, whereby applicant's above-noted advantages are attained.

Dependent claims 2 - 10, 18 - 21, 29 and 30 are submitted to distinguish patentably in like manner over Holloway and Aversa by virtue of their dependence on claim 1. With reference to claim 18, the asserted obviousness of a transparent cover is irrelevant to the distinction discussed above. With reference to claims 20 and 21, the aperture and plural compartments for which the secondary references Giese et al. and Ebbets, III et al. are respectively cited do not supply what is lacking in Aversa and Holloway with respect to the novel and distinguishing features of amended claim 1; neither Giese et al. nor Ebbets, III et al. shows any tandem arrangement of applicator and receptacle.

It is respectfully submitted that claim 1 is properly generic to the species of withdrawn claims 4 and 6 - 8, having regard in particular to the dependence of those withdrawn claims on claim 1. The recitals added to claim 1 by the present Amendment are equally readable on the species of claims 4 and 6 - 8. Therefore, it is further submitted that claims 4 and 6 - 8 should now be considered on the merits and allowed, i.e. in view of the allowability of generic amended claim 1 as discussed above.

For the foregoing reasons it is believed that this application is now in condition for allowance. Favorable action thereon is accordingly courteously requested.

Respectfully,

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I hereby certify that this paper is being deposited this date with the U.S. Postal Service as first class mail addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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